

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

EXELA PHARMA SCIENCES, LLC, ET AL, Plaintiffs, -v- DAVID J. KAPPOS, Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, ET AL, Defendants.	Civil Action No. 1:12-cv-00469
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ORDER


Before the Court is the Motion to Intervene as Defendants (Dkt. No. 21) filed by SCR Pharmatop and Cadence Pharmaceuticals, Inc.. The motion is unopposed.


The Court finds that the movants have made their motion in a timely fashion because the existing parties will not suffer prejudice by intervention at this juncture. The Court finds further that the movants, as the owner (SCR) and exclusive licensee (Cadence) of the patent at issue, have an obvious interest in the subject matter of this litigation and risk impairment of that interest should the Plaintiffs prevail in this action. Finally, the Court finds that movants' interests are not adequately represented by the existing parties to the litigation. Although the USPTO has an institutional interest in validating the patent at issue, and thereby vindicating its own reasoning and procedures, the Court considers the USPTO's incentives to be different in scope and also in magnitude from those of the movants. For these reasons, the movants are entitled to intervene by right under Fed. R. Civ. P. 24(a)(2).

Even if the movants' interests were not such that intervention should be granted as of right, the Court finds that the movants' pending infringement action against the Plaintiffs in another district, as well as their potential claims in this suit, share common questions of law and fact with this action such that permissive intervention would be proper under Fed. R. Civ. P. 24(b)(1)(B).

For the reasons above, it is **ORDERED**:

- 1) The Motion to Intervene as Defendants (Dkt. No. 21) filed by interested parties SCR Pharmatop and Cadence Pharmaceuticals, Inc. is **GRANTED**. SCR Pharmatop and Cadence Pharmaceuticals, Inc. shall be added to this action as defendants, and the new defendants' Proposed Answer, submitted with their motion, shall be docketed as their responsive pleading.
- 2) Defendants SCR Pharmatop and Cadence Pharmaceuticals, Inc. are bound by the briefing schedule set forth in the agreed upon order dated September 14, 2012 (Dkt. No. 27).


September , 2012
Alexandria, Virginia

/s/ 
Liam O'Grady
United States District Judge